IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2154 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHEMABHAI KARSANBHAI

Versus

JN RAJGOR OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Civil Application No. 2154 of 1996

MR IS SUPEHIA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 14/12/2004

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India, challenges the order of suspension

dated 11/3/1996 passed by respondent, on the ground that the petitioner is involved in the offence punishable under Section 341, 114 under Indian Penal Code and the complaint is registered as Crime Register No.42/1996 at Gomtipur Police Station, Ahmedabad.

2. That according to the authority, that with regard to the aforesaid complaint, adequate evidence is available against the petitioner for committing the crime, as urged in the said complaint and the petitioner was arrested on 7/3/1996 by the authority. It is further alleged that though the petitioner was in knowledge of law has violated the provisions, has committed the offence under Indian Penal Code and thus, misconducted himself and till the investigation of the said crime is completed by the authority, the petitioner was placed under suspension from the date of the receipt of the said order.

3. According to the learned Advocate for the petitioner, for the instances and the allegations levelled in the FIR No.42/96, the same is in realm of domestic dispute and it has nothing to do with official duties performed by the petitioner and, therefore, the order of suspension is not justified. It is, further submitted by learned Advocate for the petitioner that according to the provisions of notification dated 21/8/1985 issued by the Finance Department of State of Gujarat in exercise of the powers conferred by the proviso of 309 of the Constitution of India, a Government servant can be placed under suspension only if the officer or the person concerned, is involved in a grave misconduct or has committed serious offence and on the basis of the evidence available, there is a prima-facie case for his dismissal, removal or compulsory retirement and there is reason to believe that the presence of the Government servant in office is likely to hamper the inquiry or investigation or in a position to influence the witnesses or temper with the evidence.

4. According to learned Advocate for the petitioner, the offence is narrated in the said Crime Register involving the petitioner for the incident which took place on 27/2/1996, is purely of a private dispute and the petitioner is alleged to have been involved in the said offence. That the whole incident is with regard to illegal entry into the house of the relative of the petitioner and to throw away the household goods by the petitioner and to harass the family members, therefore, according to the learned Advocate for the petitioner, it is not a grave case of misconduct and no serious offence

is committed by the petitioner, which may result into one of the major penalties, on initiation of the inquiry against the petitioner. That the learned Advocate for the petitioner has further contended that the petitioner is in the lower rank of the service in the Traffic Branch of Ahmedabad City as a Head Constable and, therefore, when the record pertaining to the incident is with the higher officers, it will not be possible for the petitioner to indulge into tempering with such record or to influence any witnesses, and, therefore, also order of suspension is not justified and being unreasonable and arbitrary required to be quashed and set aside as violative under Article 14 of the Constitution of India.

5. The learned AGP Mr.Prachhak has submitted that prima-facie, crime case is registered against the petitioner for the offence to be punished under Section 341 and 114 of the Indian Penal Code and the conduct of the petitioner was of unbecoming of a Member of the discipline force like the police and for which the petitioner was arrested on 7/3/1996 and, therefore, order of suspension cannot be said to be exercise of arbitrary or unreasonable power by the authority and, therefore, no interference is called for.

6. This matter was admitted by issuing Rule, making it returnable on 10/4/1996 and portion of the impugned order dated 11/3/1996 at Annexure 'A' to the petition was stayed by an order dated 22/3/1996 and continued by further order dated 10/4/1996.

7. Having heard the learned Counsel for the parties and after perusing the record of the petitioner, the submissions of the learned Advocate for the petitioner appeared to be just and reasonable, so far as more than 8 years have passed since admission of this matter and order of the suspension has remained stayed. That the submission with regard to the nature of dispute, is in realm of family dispute and no other member of the society is involved and, therefore, the incident alleged has no nexus with the performance of the duty by the petitioner as a Traffic Constable. That even the FIR at Annexure 'B' to the petition also narrates statement of the relatives, about mis-behaviour of the petitioner. That so far as prima-facie case, even if departmental inquiry is initiated against the petitioner, is not made out for inflicting one of the major penalties of dismissal, removal or compulsory retirement and, therefore, when the order is stayed for all these years, it is not proper to distribute the position of the stay, which is in force. It is, therefore, directed that stay

against the order of suspension granted by this Court, shall continue till the final outcome of the criminal proceedings, if any pending before the Court.

8. With the aforesaid findings, it is observed that it is open for the respondent authority, if any case is made out against the petitioner, to pass appropriate order, in accordance with law after the final outcome of the criminal case registered against the petitioner vide Crime Register No.42/96 at Annexure 'B' to the petition. No further contentions have been raised and, accordingly, Rule is made absolute in above terms with no order as to costs.

(Anant S. Dave, J.)

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